or probable case. No one can suggest that the Controller has acted otherwise than in pursuance of the duties and in exercise of the powers which he conceived were conferred upon him by law, and there can be little doubt that, so far as concerns the present seizure, he would be immune from any proceedings at law. Whether he would enjoy the same immunity if he seized rubber under section 18 (iii) in defiance of the interpretation placed upon the subsection by the Supreme Court is not a matter which I am now called upon to decide. The only question that remains for decision is whether the power to dispose of the rubber in question can properly be exercised on the hearing of this appeal. The latter part of section 407 (ii) of the Criminal Procedure Code reads:—

> "The power herein conferred upon the Court.....shall be exercised subject to any special provisions relating to forfeiture, confiscation, destruction or delivery contained in the Enactment under which the conviction was had".

Whatever may be the powers of seizure and forfeiture conferred on the Controller by section 18 (iii), I have found that the seizure of the 6,462 lbs. of rubber on the 3rd of August 1938, was not in accordance with that sub-section, and there are accordingly no "special provisions as to the forfeiture" which would prevent the Court from making an order under section 407 (ii) of the Criminal Procedure Code.

I direct, therefore, that the rubber in question be returned to the appellant.

Appeal partly allowed and partly dismissed.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

November 5, 1938.

UTAM SINGH.....Appellant

vs.

PUBLIC PROSECUTOR.....Respondent

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1938]

Road Traffic Enactment, S. 33 (i) (a)—requirements as to information to be given thereunder.

Under Section 33 (1) (a) of the Road Traffic Enactment, the request for information as to the identity and address of the person who was driving a motor vehicle at a specified time must be made to a Police Officer not below the rank of Inspector. If the request is properly made, it is immaterial to whom the information is given if it is given with a view to its communication to the proper police officer.

MAGISTRATE'S CRIMINAL APPEAL.

E. Jeff for the Appellant.

G. F. Draper, Deputy Public Prosecutor for the Respondent.

Cur. Ad. Vult.

RAJA MUSA, AG. J.—In this case both learned Counsel consented to my framing charges under the provisions of section 33 (i) (a) of the Road Traffic Enactment and treating the evidence on record as if the trial had been under those charges. I could see no objection to such a course being adopted.

On that basis Mr. Jeff for Utam Singh argued that there can be no prosecution under section 33 (i) (a) of the Road Traffic Enactment unless the information required by the section is given to a police officer not below the rank of Inspector.

In this case it was admitted that the request for information was made by a police officer not below the rank of Inspector and that the information was in fact given to the Chief Clerk of the Traffic Department, Seremban.

To my mind all that section 33 (i) (a) requires is that the request for the information must be made by a police officer not below the rank of Inspector. It does not specify to whom that information is to be given. If therefore the request is properly made it is immaterial to whom the information is given if it is given with a view to its communication to the proper police officer. But the question as to whom the information is given is, to my mind, entirely immaterial. The request in this case was admittedly made to Utam Singh by a police officer not below the rank of Inspector. Utam Singh chose to give his information to the Chief Clerk. Surely it is not open to him to say that the information he had given to the Chief Clerk was invalid under the section because the effect of that is to show that he has not given any information at all and he has therefore failed to comply with the requirement which is an offence. To my mind he is estopped from denying the competency of the clerk to receive the information if he himself chose to give it to him.

Upon the charges before me I consider that section 33 (i) (a) means this:—

> A police officer not below the rank of Inspector may require the owner of a motor vehicle to give information as to the identity and address of the person who was driving the said motor vehicle at any specified time. That owner is under a legal obligation to supply the information. If he does not he commits an offence unless he can show that he did not know and could not with reasonable deligence have ascertained the information required. The onus is on the owner to prove that he did not know and that he had exercised reasonable diligence.

In the case before me the evidence of the Chief Clerk shows that in answer to the original requests for information Utam Singh came and said that he had been the driver. This was shown to be incorrect.

Information required under the section must be true and correct. To give incorrect informa-

tion is the same as giving no information at all. An offence is therefore committed under the section.

Utam Singh on the other hand said that when he saw the Chief Clerk he said that he did not know who had been driving his car on the dates mentioned but that he himself might have been.

Accepting this without qualification can he be said to have satisfied the requirements of the section? In my opinion clearly not. To say simply that he did not know is no defence because he must also show that he had used reasonable diligence to ascertain the information. To say as he did was to give no information at all.

For these reasons I convicted Utam Singh and fined him $5 on each charge.

The order on this appeal will then be that the appeal is allowed and the convictions and sentences are set aside. The fines paid must be refunded. There will, however, be a conviction recorded against him under two charges under section 33 (i) (b) of the Road Traffic Enactment to which he is fined $5 on each charge.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
October, 10, 1938

KUNDAN SINGH & 7 ORS.....Appellants
vs.
PUBLIC PROSECUTOR.....Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 53-60 of 1938]

Criminal law—charge of rioting—conviction for causing hurt—whether conviction sustainable —Penal Code (Cap. 45), ss. 147, 323; Criminal Procedure Code (Cap. 6), S. 169.

The appellants were charged with rioting under Section 147 of the Penal Code but were convicted for causing hurt under Section 323 of the Penal Code.

Held, that the conviction must be set aside, and that although causing hurt might be an element in a case of riot, it is not a "minor offence" within section 169 of the Criminal Procedure Code.

The term "minor offence" in Section 169 means merely an offence with a smaller punishment attached than the offence with which an accused person was originally charged.

Sub-section (i) of Section 169 covers the case where some of the facts only of those constituting the original offence are proved and subsection (ii) of that section where additional facts are proved pointing to the commission of the minor offence.

MAGISTRATE'S CRIMINAL APPEAL.

Diamond for the Appellants.

Brodie, Deputy Public Prosecutor for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—In this case the Appellants were charged as follows:—

> "That you on 10.4.38 at about 7.30 p.m. at the Sikh Settlement 3rd mile, Gopeng Road, Ipoh were a member of an unlawful assembly, and, in prosecution of the common object of such assembly—viz, the committing of criminal intimidation, committed the offence of rioting which is an offence punishable under Section 147 Cap. 45."

The Magistrate convicted them under Section 323 of Cap. 45 for causing hurt. This could only be done by his powers under Section 169 of the Criminal Procedure Code. At first sight some difficulty appears to arise from the use of the words "minor offence," the use of the word "minor" would according to its natural meaning indicate a division into categories not a mere relation between two offences *inter se* but subsection (iii) shows that other offences under the Penal Code may be minor offences within the meaning of this section, and therefore the term means merely an offence with a smaller punishment attached than the offence with which an accused person was originally charged. In interpreting the section consideration must be given to the effect of sub-section (i) and (ii). Subsection (i) covers the case where some of the facts only of those constituting the original offence are proved, sub-section (ii) where additional facts are proved. The present case is one which comes within sub-section (i) if it comes within Section 169 at all. To come within sub-section (i) the offence of which the accused is convicted must be one, which is, as it were, necessarily included in the offence originally charged, which is not the case here, although causing hurt might have been element in a case of riot. In this connection it is useful to refer to the original charge.

I have in deciding the case followed the not very authoritative Indian decisions on the corresponding Indian Section. The convictions must therefore be quashed.

I may add that I fail to see how if the Magistrate, as is apparently the case, found that there was not sufficient common purpose for the purpose of establishing a case of riot he could convict all the appellants of the offence of causing hurt.

[APPELLATE CIVIL JURISDICTION]
MURRAY-AYNSLEY, J.

SANTA SINGH son of MEYA SINGH.....Appellant
vs.
SANTA SINGH son of LEHNA SINGH.....Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 26 of 1938]

Bills of Sale—assurance of cattle—whether include offspring born during subsistence of bill —description of chattels—sufficiency of—Bills of Sale Enactment (Cap. 57) s. 5 (i).

By a bill of sale the grantor assigned among other buffaloes "one Indian she buffalo calf colour black one